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October 13, 2017

The Honorable Jocelyn Boyd
Chief Clerk and Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29201

Re: Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina
Electric & Gas Company, Defendant/Respondent
Docket No. 2017-207-E

Dear Ms. Boyd:

Attached for filing please find SCE&G's Response to the Commission Request in Order
No. 2017-637 for Briefing Concerning Coordination of Dockets for the matter cited above.

If you have any questions regarding these matters, please do not hesitate to contact me.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership

Belton T. Zeigler
Partner

cc: Shannon Bowyer Hudson, Esq.
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STATE OF SOUTH CAROLINA

(Caption of Case)

Friends of the Earth and Sierra Club, Complainant/
Petitioner v. South Carolina Electric & Gas Company,
Defendant/Respondent

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2017 - 207 - E

(Please type or print)

Submitted by: Belton T. Zeigler

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)

- ☒ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☐ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other:

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input checked="" type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

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**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-207-E**

IN RE:

Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent)))) _____	SCE&G'S RESPONSE TO THE COMMISSION REQUEST IN ORDER NO. 2017-637 FOR BRIEFING CONCERNING COORDINATION OF DOCKETS
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INTRODUCTION

SCE&G files the present brief in response to Public Service Commission of South Carolina (the "Commission") Order No. 2017-637. In that Order, the Commission referred to Dockets No. 2017-207-E and Docket No. 2017-305-E and directed the parties to file "briefs communicating their positions regarding how best to coordinate the two proceedings." The Commission based this directive on the grounds that "the operative facts and the relief sought in the two actions are similar."

SCE&G files this brief specifically preserving and not waiving any claims and positions it has set forth in its Petition for Rehearing and Reconsideration of Order No. 2017-637, which it is filing contemporaneously with this brief. SCE&G would ask the Commission to take up that petition before making any determinations based on these briefs. The relief requested in that Petition for Rehearing and Reconsideration is fully consistent with SCE&G's position here, and if granted, would moot or fulfill the requests made in this brief.

ARGUMENT

Given the extraordinary public importance of the matters before the Commission, it is uniquely important that proceedings before the Commission in these matters be clear, coherent, easily managed and free from procedural error. Consolidating or coordinating the consideration

of these issues across three separate dockets, two of which (Dockets No. 2017-207-E and Docket No. 2017-305-E) are fundamentally flawed from a legal standpoint, is an invitation for confusion, delay, waste, and procedural error. The appropriate vehicle for the orderly consideration of these matters is the abandonment petition that SCE&G withdrew at the request of legislative leaders, and has indicated it will refile when the progress in the legislative investigation warrants. In this abandonment proceeding, all issues that are legally relevant to the matters raised in the two present dockets can be heard in a single docket, with a single set of discovery, a single set of parties and intervenors, and a single procedural schedule. To do otherwise is to unnecessarily duplicate proceedings, risk confusion, and create the potential for errors in the record due to the procedural complexity of trying to litigate three overlapping dockets simultaneously.

In addition, the two actions that are currently before the Commission have very different statutory bases, and therefore raise very different questions. For that reason, they can lawfully support very different discovery.

Docket No. 2017-207-E is filed under S.C. Code Ann. § 58-27-970. This is the statute that allows the Commission to grant refunds to customers when utilities have charged rates that have not been authorized by the Commission. S.C. Code Ann. § 58-27-970 is the only statutory basis for the filing in Docket No. 2017-207-E. Therefore, the only relevant issue in Docket No. 2017-207-E is whether the rates charged by SCE&G were “authorized by law,” (*i.e.*, were they charged pursuant to valid and enforceable rate orders issued by this Commission). See *S.C. Elec. & Gas Co. v. Pub. Serv. Comm’n*, 275 S.C. 487, 490, 272 S.E.2d 793, 795 (1980); *accord Hamm v. Cent. States Health & Life Co. of Omaha*, 299 S.C. 500, 504, 386 S.E.2d 250, 253 (1989). Of course, the record clearly shows that all the rates charged by SCE&G related to the nuclear

project were expressly authorized by the Commission, and supported by South Carolina Office of Regulatory Staff (“ORS”) as valid. The exceptionally narrow scope of issues potentially raised by the petition in Docket No. 2017-207-E make its legal and factual overlap or similarity with Docket 2017- 305-E effectively non-existent. By attempting to coordinate these very different proceedings, there is no judicial economy, and much potential for waste, error, and confusion.

Docket No. 2017-305-E, which the ORS filed under the authority of S.C. Code Ann. § 58-27-920, similarly raises a very narrow set of issues. The basis for relief asserted in that docket is the claim that the South Carolina Attorney General has concluded that certain portions of the Base Load Review Act, as applied, are “constitutionally suspect”. Docket No. 2017-305-E raises purely legal arguments which will support at best limited discovery.

In addition, S.C. Code Ann. § 58-27-920 is a rate-making statute. To justify relief under it, ORS must show the rates it proposes that the Commission should enforce for SCE&G going forward are “fair and reasonable,” and that ORS has conducted a preliminary investigation establishing that to be the case.

Conducting extensive discovery in, much less coordinating discovery between, these very limited and different dockets is neither justified nor will it lead to judicial efficiency or economy for the parties. The result will only be confusion, potential for error, and waste of resources. The appropriate course for the Commission to take is to take up the motions to dismiss. Continuing discovery or coordination between the two current dockets only invites waste, confusion and error.

CONCLUSION

For the reasons stated above, SCE&G respectfully requests the Commission:

1. To grant its Motion for Rehearing and Reconsideration related to Order No. 2017-637;
2. After due hearing, grant its Motions to Dismiss in Docket No. 2017-207-E;
3. To stay discovery in Dockets No. 2017-207 and Docket No. 2017-305-E pending hearing on the Motions to Dismiss;
4. ; and
5. Grant such further relief as the Commission deems just and proper.

Respectfully submitted,



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Cayce, South Carolina
October 13, 2017

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-207-E**

IN RE:

Friends of the Earth and Sierra Club,)
Complainant/Petitioner v. South Carolina)
Electric & Gas Company,)
Defendant/Respondent)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one copy of SCE&G's Response to the Commission Request in Order No. 2017-637 for Briefing Concerning Coordination of Dockets to the persons named below at the addresses set forth via U.S. First Class Mail and electronic mail:

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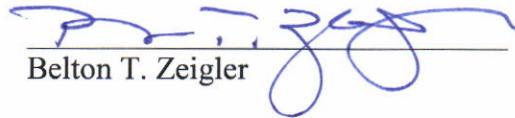
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October 13, 2017


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